

(2006) 06 JH CK 0010

In the Jharkhand High Court

Case No : Cr.M.P. No. 51 of 2004 & Criminal M.P. No. 49 of 2004 & Criminal M.P. No. 52 of 2004

Bhanu Pratap Singh and Another

APPELLANT

Vs

The State of Jharkhand and Another

RESPONDENT

Date of Decision : 16-06-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Forest (Conservation) Act, 1980 — Section 2, 3(A), 3(B)
Forest Act, 1927 — Section 29, 33, 41, 42

Citation : (2006) 4 JCR 133

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Advocate : A.K. Mehta and Ashutosh Anand, for the Appellant; Anita Sinha, APP, for the Respondent

Final Decision : Allowed

Judgement

R.R. Prasad, J.—This application u/s 482 Cr. P.C. has been filed for Quashing the entire criminal proceeding of B.F. Case No. 47 of 2003 lodged against the petitioners under Sections 33, 41 and 42 of the Indian Forest Act read with Section 2, 3(A) and 3(B) for contravention of the provisions of the Indian Forest Act and also the Forest (Conservation) Act, 1980 and also for quashing the order dated 15.10.2003 passed by Chief Judicial Magistrate, Dhanbad whereunder cognizance of the offences as alleged was taken against the petitioners.

2. Before coming to the submission advanced on behalf of the petitioners in support of their case prosecution case as disclosed in the prosecution report needs to be stated herein.

3. On 28.8.2003 during the routine inspection forest guard noticed that the petitioners by deployment of huge work force extracted and mined out coal about 700 MT from the Ghanudih protected forest area. Thereupon opposite party No. 2 filed a prosecution report. Upon which the case was instituted and

the Chief Judicial Magistrate on 15.10.2003 took the cognizance of offences alleged.

4. Being aggrieved with the said order as well as by the prosecution itself, the petitioners have preferred this application.

5. Learned Counsel appearing for the petitioners submits that some back grounds would be necessary for better appreciation of this case and those are that the coal mines was taken by the erstwhile colliery from the rightful owner under permanent settlement through a registered deed giving some right over the lease hold area and after settlement the erstwhile colliery were doing mining operation until nationalization of the coal mines by virtue of enactment of Cooking Coal Mines (Nationalization) Act, 1972. After nationalization, the petitioners had been doing mining operation without any hindrance till the year 1999. When forest official directed the Chief Zonal Manager not to carry out the mining activities in the mauza Ghanudih as that amount violation of the provisions of the Forest Conservation Act and called upon him to file his show cause in the matter. That order restraining the petitioners from doing mining operation was challenged before this Court vide CWJC No. 1106 of 1999 (R), which was dismissed by this Court keeping in view the law laid down by the Apex court in the case of T.N. Godavarman Thirumulkpad etc. v. Union of India and Ors. That order was challenged before this Court vide L.P.A. No. 203 of 2001 and this Court having taken into consideration the conflict between the mining right of the appellants vis-a-vis social aspect relating to protection and preservation of the forest and the stand of the appellants that mining operation in no way causes deforestation by felling trees, advised the parties to take into account the stock of the situation and arrived at amicable settlement and then apprise the Court about such settlement, By the said order dated 8.60.2001, this Court allowed the petitioners to do mining activities when it was undertaken that no trees shall be felled. Ultimately the said L.P.A. was dismissed vide order dated 3.4.2003 with a direction to the petitioners to put forth his case in answer to notice (which was under challenge before this Court under writ petition as well as L.P.A.) asking for show cause in the matter of continuance of the mining activities so that the authority can take decision in the matter. Pursuant to that petitioners did represent before the authority, but Divisional Forest Officer, Dhanbad with bias mind did hold by order dated 9.10.2003 that the land in question falls within the forest area. That order was challenged before this Court vide W.P.(C) No. 4503 of 2003 and this Court vide order dated 10.9.2003 called upon the counsel for the State to file counter affidavit so that the case may itself be disposed of at the stage of admission and by the said order the Court stayed the operation of the order dated 9th August, 2003 until further orders.

6. It was further submitted that thereafter on getting knowledge of the said order forest official got the case lodged before the court of C.J.M. on 5.10.2003 malafidely showing the date of offence as 25.8.2003 in order to prosecute the petitioners. Thus it was submitted that in view of the backgrounds as stated

above it can certainly be said that the prosecution was lodged with malafide intention and hence the entire proceeding is fit to be quashed, as the petitioners in any event cannot be said to have had any mens rea for committing offence as alleged, as the petitioners had earlier been allowed by this Court to go on with the mining activities.

7. Learned Counsel appearing on behalf of the State did refer counter affidavit filed on behalf of the opposite party No. 2 wherein it has been stated that the land in question where mining operation was being done has been duly notified as protected forest u/s 29 of the Forest Act and as such any mining activities contravenes the provision of the Forest Conservation Act and that apart Supreme Court in a case of T.N. Godavarman Thirumulkpad etc. v. Union of India and Ors. has directed all the State Governments to ensure stoppage of all the non-forestry activities of the forest land and as such prosecution launched against the petitioners cannot be said to be bad.

8. Having heard learned Counsel for the parties it comes to the fore that it is admitted position that the lands where mining activities are allegedly being done falls within the protected forest, but the dispute between the mining right of the appellants vis-a-vis preservation of the forest is still not over as earlier while the matter was under challenge in L.P.A. before this Court the petitioners were allowed to do the mining work on giving undertaking that it will not fell the trees and the parties were asked to work out so that they may arrive at some amicable settlement. However, the said L.P.A. was ultimately dismissed and the authorities rejected the representation and directed to stop the mining operation, but the same was challenged before this Court in W.P. (C) No. 4503 of 2003 and this Court vide order 10.9.2003 (Annexure-2) stayed the operation of the order dated 9th August, 2003 until further orders. It is true that on the date i.e. 26.8.2003 there was no stay order but even then the petitioners cannot be said to have acted with mens rea to commit offence by indulging in mining activities as earlier the petitioners were allowed to do the mining work by this Court in L.P.A. No. 203/2001 and the said L.P.A. was disposed of directing the petitioners to submit their show cause so that decision may be taken over the dispute and the liberty was given to the petitioners to approach this Court for an appropriate relief, if they become aggrieved with the decision of the authority. The other aspect of the matter regarding filing of the complaint after coming to know of the order of this Court passed in the writ petition, by antedating the prosecution report cannot be lost sight of particularly in view of the fact that prosecution report seems to have been filed before the court below on 15.10.2003. However, without going into the evidence this cannot be decided conclusively and therefore any result based on that ground, in my view, would not be proper. However coming to another aspect I may state that it has been well settled that normally the High Court in exercise of its jurisdiction u/s 482 Cr. P.C. refrains itself from quashing the proceeding, if the case is made out in the F.I.R., but at the same time the court in exercise of its jurisdiction u/s 482 Cr. P.C. is under obligation to interfere with the proceeding, if the court comes to the conclusion that the continuance of the

proceeding is abuse of the process of the court.

9. As I have said earlier that the petitioners were allowed by the court to go ahead with the mining activities the present proceeding, if is allowed to be continued would certainly amount an abuse of the process of the court. Hence entire criminal proceeding of B.F. Case No. 47 of 2003 and including the order dated 15.10.2003 passed by Chief Judicial Magistrate, Dhanbad taking cognizance of the offences under Sections 33, 41 and 42 of the Indian forest Act read with Section 2, 3(A) and 3(B) of the Forest (Conservation) Act, 1980 against the petitioners is hereby quashed. Consequently this application is allowed.